

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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GTE Telephone Operators)	CC Docket No. 98-79
GTOC Tariff No. 1)	
GTOC Transmittal No. 1148)	
)	
BellSouth Telecommunications, Inc.)	CC Docket No. 98-161
BellSouth Tariff FCC No. 1)	
BellSouth Transmittal No. 476)	
)	
Pacific Bell Telephone Company)	CC Docket No. 98-103
Pacific Bell Tariff FCC No. 128)	
Pacific Transmittal No. 1986)	

**OPPOSITION OF
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION**

The Competitive Telecommunications Association ("CompTel"), by its undersigned counsel, hereby submits its comments in the above-captioned dockets.

I. Background

Over the course of the late spring and the summer, GTE, BellSouth, and Pacific Bell (the incumbent local exchange carriers, or "ILECs") filed tariffs to establish asymmetrical digital subscriber line ("ADSL") services from various local exchange end offices in their in-region territories.¹ ADSL is a loop technology that involves placing special electronics on existing ILEC copper loops to increase their capacity. The ILEC tariff filings suggest that Internet service providers ("ISPs") could increase the speed at which they communicate with

¹ See GTE Transmittal No. 1148 (filed May 15, 1998); Pacific Bell Transmittal No. 1986 (filed Jun. 15, 1998); and BellSouth Transmittal No. 476 (filed Aug. 18, 1998).

their subscribers by purchasing ADSL-conditioned local loops rather than standard voice-grade local loops.²

While ILECs frequently tariff new local service offerings, these ADSL offerings are unusual because the ILECs have tarified them at the federal level. Because such local service offerings normally are tarified at the state level, the Commission suspended each tariff for one day and entered accounting orders. The Commission initiated an investigation into the ILECs' ADSL tariffs to focus upon, *inter alia*, whether the ILEC ADSL offerings are jurisdictionally intrastate or interstate services.

CompTel wishes to make two basic points on the jurisdictional issue presented. First, broad jurisdictional questions like those presented in these proceedings are best resolved through a rulemaking or inquiry proceeding rather than through adjudicating individual ILEC tariff filings. Second, ISP end users purchase local telecommunications service to communicate with ISP subscribers, and given the local nature of this traffic, any such service is properly tarified with state commissions, and not the FCC.

II. The investigation of an ILEC's ADSL tariff is not an appropriate forum to resolve the industry-wide issues presented

As a threshold matter, CompTel respectfully submits that the Commission would better address the issues presented in this docket through a rulemaking or an inquiry, rather than by adjudicating these important questions through a tariff suspension proceeding. CompTel thus requests that the Commission stay its current tariff investigations and convene a rulemaking or inquiry to generate the broad base of industry input warranted by the issues presented.

² See GTE Transmittal No. 1148, Description and Justification at 1; Pacific Bell Transmittal No. 1986, Description and Justification at 2; BellSouth Transmittal No. 476, Description and Justification at 1.

Existing FCC regulation and industry practice has correctly treated calls from subscribers to their ISPs (and other enhanced service providers) as local calls for the past 15 years, and any change in the FCC's understanding of local calls to ISPs would profoundly impact Commission decisions regarding access charges, universal service, expanded interconnection, basic versus enhanced service classification, and myriad other areas of Commission policy. Additionally, Commission action threatens to disrupt the work of state public service commissions, which traditionally have regulated local services. Given the potential impact of the questions presented, this Commission, the state commissions, telecommunications service providers, enhanced service providers, and consumers all would benefit by a broad Commission rulemaking or inquiry, rather than individual ILEC tariff adjudications.

III. Should the Commission decide to address the merits in this proceeding, it should reaffirm that all calls from end users to ISPs are local calls, and thus fall within the jurisdiction of state public service commissions

If the Commission does decide to address the merits in this proceeding, it should reaffirm its long-held view that calls between end-user subscribers and their ISPs are local (*i.e.*, intrastate) calls. The Commission consistently, repeatedly, and correctly has recognized that enhanced service providers, which include ISPs, are treated as end users regarding calls to their customers.³ As the Commission recently noted, "ISPs ... pay for their connections to the incumbent LEC networks by purchasing [local] services under **state** tariffs."⁴ The ISPs and the ILECs – including BellSouth, GTE, and Pacific Bell – have operated their businesses in this

³ MTS and WATS Market Structure, Memorandum Opinion and Order, Docket No. 78-72, 97 FCC 2d 682, 711-22 (1983). *See also*, *Federal-State Joint Bd. on Universal Service, Report to Congress*, CC Docket 96-45, ¶ 105 (1998).

⁴ *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982, ¶ 346 (1997)

manner for over a decade, and the Commission should not permit the ILECs to disrupt these well-established practices.

The ILECs fail to differentiate between the telecommunications service provided over the local loop with the enhanced service provided by ISPs. GTE, for example, argues that "ADSL is inherently an interstate service because [ADSL] is designed to be used to communicate with parties outside the end user's home state via e-mail, access remote databases, and interaction with web sites throughout the country and the world."⁵ To the contrary, the ISP – and not ILEC's ADSL local loop – provides Internet access. While it may be true that ISPs "leverage [local] telecommunications connectivity to provide [Internet] services,"⁶ that is true regardless whether the ISP communicates with the end user via local loops equipped with standard voice-grade electronics or ADSL electronics. The ADSL loop is designed to increase the speed of communication from the ISP to its subscribers, and not to enhance the ISPs connectivity with remote databases and web sites.

Finally, any change in FCC policy on the jurisdiction of ISP traffic would conflict with numerous state commission decisions. The 21 state commissions that have ruled on the issue have unanimously held that the telecommunications service used by ISPs to reach their subscribers is jurisdictionally intrastate.⁷ This view was recently supported by Eighth Circuit Court of Appeals, which noted that "ISPs subscribe to ILEC facilities in order to receive **local**

⁵ Direct Case of GTE at 7.

⁶ *Federal-State Joint Bd. on Universal Service, Report to Congress*, CC Docket 96-45, ¶ 105.

⁷ The 21 states that have ruled on this issue include Arizona, Colorado, Connecticut, Florida, Illinois, Maryland, Michigan, Minnesota, Missouri, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Virginia, Washington, West Virginia, and Wisconsin.

calls from customers who want to access the ISP's data."⁸ Any FCC decision to the contrary would call into question each and every one of these decisions, and likely incite the ILECs to relitigate these issues state by state. Such an outcome would create unnecessary uncertainty in the industry and in the financial markets, and would disserve the public interest.

IV. Conclusion

For the foregoing reasons, the Commission should reject the ILEC tariff offerings, or in the alternative, the Commission should convene a rulemaking or an inquiry to develop a proper record on the important jurisdictional issues presented herein.

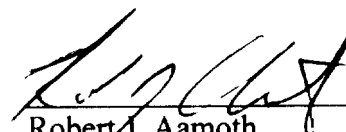
Respectfully submitted,

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⁸ *Southwestern Bell Telephone et al. v. Federal Communications Commission*, Slip Op. No. 97-2618 at n.9 (8th Cir. Aug. 19, 1998).

CERTIFICATE OF SERVICE

I, Arethea P. Johnson, hereby certify that I have served a copy of the "Opposition Of Competitive Telecommunications Association" this 18th day of September, 1998, upon the following parties via hand delivery:

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